FARAD CONTINUATION SHEET

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 745 OF 2004
WITH
WRIT PETITION NO. 5869 OF 2004

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

CORAM: A.S. OKA, J.
DATE : 31st August, 2004.

P.C.:-

1. The Second Appeal and Writ Petition can be disposed of by common order. The Respondent in the Second Appeal filed a suit against the Appellant for possession of the suit premises. Admittedly, the Appellant is the brother-in-law of the Respondent. The case of the Respondent in Second Appeal is that he is the tenant in respect of the suit premises. As the financial condition of the Appellant was not sound, the Respondent at the instance of his wife called the Appellant to Solapur. The Respondent alleged that the suit premises were

allowed to be used by the Appellant for carrying on his business as a gratituous licensee. The case of the Respondent is that he is the tenant in respect of the suit premises and the rent receipts stand in his name. He claimed possession on the basis that he was the tenant in respect of the suit premises and the a gratitous licence granted to the Appellant was revoked.

2. It is the case of the Appellant that he is the tenant in respect of the suit premises and he has been paying rent in respect of the suit premises. The other suit is filed by the Appellant in the Second Appeal against the Respondent in Second Appeal and the landlord of the suit premises by which Appellant claimed declaration of tenancy in respect of the suit premises.

3. The Appellant succeeded in the Trial Court. There were two Appeals preferred by the Respondent before the District Court. The Appellate Court has considered the case made out by the Appellant that he is the tenant in respect of the suit premises.

4. The Appellate Court held that there is no documentary evidence to show that the Appellant was paying the rent. The Appellate Court also considered the oral evidence of the Appellant. In the oral evidence, the Appellant admitted that he is maintaining accounts of his business in which the fact of payment of rent by him has been noted. The Appellant admitted that he has preserved all the account books of the business and he was writing the accounts even on the date of recording his deposition. He specifically stated that the amount of rent which he is paying in respect of the suit premises is also mentioned in the accounts books. Admittedly the Appellant failed to produce the accounts books. Therefore, adverse inference was drawn by the Appellate Court against the Appellant.

5. When the Appellant himself came out with the case that he has maintained accounts which show that rent is being paid by him and entries of the payment of rent are reflected in the accounts which were maintained by him, he ought to have produced all accounts before the Court. When the Appellant was in

possession of relevant documents which could have thrown light on the controversy involved in the proceedings and when he failed to produce the relevant documents, this was a fit case where adverse inference should have been drawn. The adverse inference was rightly drawn by the Appellate Court. The Appellant claimed that he was a tenant by contending tht he was paying rent in respect of the suit premises. After having failed to establish the said case, the Appellate Court was right when it came to the conclusion that the Respondent in the Second Appeal was the tenant in respect of the suit premises as the rent receipts stand in his name of the suit premises.

6. As a result, the suit filed by the Respondent who is the brother-in-law of the Appellant has been decreed. Consequently, the declaratory suit filed by the Appellant has been dismissed.

7. There is no error in the view taken by the Appellate Court. Hence, the Second Appeal and the Writ Petition are dismissed with no orders as to costs.

8. On the request made by the learned counsel appearing for the Appellant ad-interim order passed by this Court on 22nd January 2004 will continue to operate for a period of three weeks from today.

sd/-

JUDGE